

12-19-2012

## State v. Glenn Respondent's Brief Dckt. 39567

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

### Recommended Citation

"State v. Glenn Respondent's Brief Dckt. 39567" (2012). *Idaho Supreme Court Records & Briefs*. 4060.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/4060](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/4060)

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

STATE OF IDAHO, )  
 )  
 Plaintiff-Respondent, ) NO. 39567  
 )  
 vs. )  
 )  
 SAMUEL THOMAS GLENN, )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA

HONORABLE TIMOTHY L. HANSEN  
District Judge

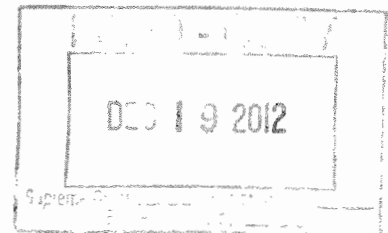
LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

JESSICA M. LORELLO  
Deputy Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

ATTORNEYS FOR  
PLAINTIFF-RESPONDENT

ERIK R. LEHTINEN  
Deputy State Appellate  
Public Defender  
3647 Lake Harbor Lane  
Boise, Idaho 83703  
(208) 334-2712



ATTORNEY FOR  
DEFENDANT-APPELLANT

## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE.....	1
Nature Of The Case.....	1
Statement Of Facts And Course Of Proceedings .....	1
ISSUE.....	4
ARGUMENT .....	5
I.    Because Glenn Failed To Establish Good Cause For His Failure To Comply With The Filing Requirements Of I.C.R. 12(d), He Was Not Entitled To Consideration Of The Merits Of His Motion And His Motion Should Have Been Denied As Untimely .....	5
A.    Introduction .....	5
B.    Glenn’s Motion Should Have Been Denied As Untimely .....	5
II.   Even If This Court Considers The Merits Of Glenn’s Motion To Dismiss, Glenn Has Failed To Show That The District Court Erred In Denying The Motion Given The Controlling Holding In <i>Reed</i> , Which Glenn Has Not Shown To Be Manifestly Wrong, Unwise, Unjust, Or Contrary To Any Idaho Supreme Court Precedent .....	7
A.    Introduction.....	7
B.    Standard Of Review.....	8
C.    Glenn Has Failed To Show Error In The Denial Of His Motion To Dismiss.....	9
CONCLUSION .....	17
CERTIFICATE OF SERVICE .....	17

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Houghland Farms, Inc. v. Johnson</u> , 119 Idaho 72, 803 P.2d 978 (1990) .....	8
<u>Manners v. State, Bd. of Veterinary Medicine</u> , 107 Idaho 950, 694 P.2d 1298 (1985) .....	10, 11, 12
<u>State v. Alanis</u> , 109 Idaho 884, 712 P.2d 585 (1985) .....	7
<u>State v. Avelar</u> , 129 Idaho 700, 931 P.2d 1218 (1997) .....	7
<u>State v. Card</u> , 121 Idaho 425, 825 P.2d 1081(1991) .....	8
<u>State v. Dana</u> , 137 Idaho 6, 43 P.3d 765 (2002) .....	8
<u>State v. Dice</u> , 126 Idaho 595, 887 P.2d 1102 (Ct. App. 1994) .....	6, 7
<u>State v. Dorn</u> , 140 Idaho 404, 94 P.3d 709 (Ct. App. 2004) .....	8
<u>State v. Guzman</u> , 122 Idaho 981, 842 P.2d 660 (1992) .....	8
<u>State v. Guzman</u> , 122 Idaho 981, 842 P.2d 660 (Idaho 1992) .....	10
<u>State v. Humphreys</u> , 134 Idaho 657, 8 P.3d 652 (2000) .....	8
<u>State v. Odiaga</u> , 125 Idaho 384, 388, 871 P.2d 801, 805 (1994) .....	8
<u>State v. Parkinson</u> , 144 Idaho 825, 172 P.3d 1100 (2007) .....	10, 12, 13
<u>State v. Reed</u> , 149 Idaho 901, 243 P.3d 1089 (Ct. App. 2010) .....	passim
<u>State v. Robinson</u> , 143 Idaho 306, 142 P.3d 729 (2006) .....	10, 11, 12, 13
<u>State v. Thompson</u> , 140 Idaho 796, 102 P.3d 1115 (2004) .....	8
<u>United States v. Sharp</u> , 145 Idaho 403, 179 P.3d 1059 (2008) .....	10, 13, 14
<u>Verska v. Saint Alphonsus Regional Medical Center</u> , 151 Idaho 889, 265 P.3d 502 (2011) .....	15

## **STATUTES**

I.C. §18-8004 .....	9
I.C. § 18-8005 .....	9, 13, 15, 16
I.C. § 18-8304 .....	13
I.C. § 19-2604 .....	passim

## **RULES**

ICR 12 .....	2, 5
--------------	------

## STATEMENT OF THE CASE

### Nature Of The Case

Samuel Glenn appeals from the judgment entered upon his conditional guilty plea to felony driving under the influence. Glen challenges the district court's denial of his motion to dismiss, contending his driving under the influence charge could not be enhanced to a felony based upon a prior charge that was dismissed pursuant to I.C. § 19-2604.

### Statement Of Facts And Course Of Proceedings

Glenn was arrested and issued a citation for driving under the influence. (R., p.6.) The state subsequently filed an Amended Complaint charging Glenn with felony driving under the influence based on a prior conviction for felony driving under the influence "within the previous fifteen years." (R., pp.9-10.) The state also charged Glenn with possession of an open container in a motor vehicle. (R., pp.9-10.) Glenn waived his preliminary hearing and was bound over to district court on both charges. (R., pp.32-36.)

After being bound over, Glenn filed a motion to dismiss asserting dismissal was required because the prior felony used to enhance his current charge to a felony was "withdrawn and Judge Horton issued an Order Dismissing that Withheld Judgment." (R., p.43.) Attached to Glenn's motion was the Order of Dismissal Pursuant to I.C. § 19-2604 entered on March 22, 2007, in Ada County Case No. H0100022.<sup>1</sup> (R., pp.45-46.) That Order states, in relevant part:

---

<sup>1</sup> Although the state's charging documents do not set forth the details of the prior felony conviction used to enhance the charge in this case (R., pp.9-10, 33-36), it

"[T]he Court determines that defendant's guilty plea shall be, and hereby is, set aside and this action is finally dismissed and the defendant discharged." (R., p.46.) The state filed a brief in opposition to Glenn's motion, asserting the motion should be denied for three reasons: (1) the motion was untimely under I.C.R. 12(d); (2) Glenn failed to file a separate memorandum in support of the motion as required by Local Rule 8.1; and (3) Glenn failed to explain why his request for dismissal was not foreclosed by the Court of Appeals' recent opinion in State v. Reed, 149 Idaho 901, 243 P.3d 1089 (Ct. App. 2010). (R., pp.67-69.)

The court held a hearing on Glenn's motion to dismiss (5/27/2011 Tr.), after which it entered a written Memorandum Decision and Order (R., pp.76-80). With respect to the state's request that the court deny the motion as untimely, the court stated: "The Court in its discretion, pursuant to I.C.R. 12(d), determines that Defendant's motion, although not timely, should nonetheless be addressed on its merits and therefore relieves Defendant of his failure to comply with this rule."<sup>2</sup> (R., p.77.) The court instead addressed the merits of Glenn's motion and, relying on Reed, denied Glenn's motion. (R., pp.76-78.) Glenn thereafter entered a conditional guilty plea to felony driving under the influence, reserving his right to challenge the denial of his motion to dismiss. (R., pp.85-91; see

---

appears undisputed that the relevant charge was the felony driving under the influence charge adjudicated in Ada County Case No. H0100022. In that case, judgment was entered on August 8, 2001, at which time the Court suspended Glenn's sentence and placed him on probation for five years. (See R., p.76.) Glenn's probation was later terminated on July 24, 2004. (Id.)

<sup>2</sup> The court also rejected the state's request to deny relief based on Glenn's alleged failure to file a supporting memorandum since, as the district court noted, Glenn filed such a memorandum on May 6, 2011. (R., pp.49-61, 77.)

generally 6/10/2011 Tr.) The court imposed a unified ten-year sentence with three years fixed, but retained jurisdiction. (R., pp.104-107.) Glenn filed a timely notice of appeal. (R., pp.116-118.)



## ISSUE

Glenn states the issue on appeal as:

Whether *State v. Reed*, 149 Idaho 901 (Ct. App. 2010), should be overruled, such that it was error to allow the State to enhance Mr. Glenn's sentence for driving under the influence because he has "pled guilty or has been found guilty of a felony violation of [the relevant code sections], notwithstanding the form of the judgment(s) or withheld judgment(s) . . . within fifteen (15) years" where the necessary prior convictions [sic] no longer exists as the prior guilty plea had been withdrawn and the case dismissed.

(Appellant's brief, p. 6.)

The state rephrases the issue as:

Should the Court affirm the denial of Glenn's motion to dismiss on the grounds that it was untimely and Glenn failed to show good cause or excusable neglect to excuse the untimely filing? Alternatively, given Glenn's acknowledgment that controlling precedent forecloses his argument and his lack of any reasoned justification for overruling that precedent, has Glenn failed to establish any basis for reversal?

## ARGUMENT

### I.

Because Glenn Failed To Establish Good Cause For His Failure To Comply With The Filing Requirements Of I.C.R. 12(d), He Was Not Entitled To Consideration Of The Merits Of His Motion And His Motion Should Have Been Denied As Untimely

#### A. Introduction

Although the district court "relieve[d] [Glenn] of his failure to comply with" the filing requirements of I.C.R. 12(d), Glenn never offered a reason for his failure to do so and the district court did not find good cause or excusable neglect that would warrant consideration of Glenn's untimely motion. (R., p.77.) This Court should therefore affirm the denial of Glenn's motion to dismiss on the ground that the motion was untimely.

#### B. Glenn's Motion Should Have Been Denied As Untimely

Motions to dismiss filed pursuant to I.C.R. 12(b) "must be filed within twenty-eight (28) days after the entry of a plea of not guilty or seven (7) days before trial whichever is earlier." I.C.R. 12(d). Glenn pled not guilty on February 11, 2011, and his trial was set for June 20, 2011. (R., pp.3, 40-41.) Pursuant to I.C.R. 12(d), Glenn's motion to dismiss was due no later than March 11, 2011, which was the earlier of the two dates contemplated by I.C.R. 12(d). Glenn did not, however, file his motion until April 26, 2011, more than one month after the time for filing the motion expired.

Although I.C.R. 12(d) allows the district court to shorten or enlarge the time for filing a Rule 12 motion, in exercising that discretion, the court must find that the defendant has shown good cause or excusable neglect. I.C.R. 12(d).

Glenn showed neither. Indeed, the state can find nothing in the record, either in writing or at the hearing on the motion to dismiss, where Glenn responded to the state's assertion that the motion should be denied as untimely, much less offered any basis for finding good cause or excusable neglect. (See generally R.; 5/27/2011 Tr.) Rather, it appears from the district court's Memorandum Decision and Order that the court simply concluded that the motion should "be addressed on its merits" even though it was untimely. (R., p.77.) This conclusion constitutes an abuse of discretion. State v. Dice, 126 Idaho 595, 887 P.2d 1102 (Ct. App. 1994), is on point.

In Dice, the defendant filed a suppression motion, which the state objected to as untimely. 126 Idaho at 597, 887 P.3d at 1104. The district court considered the motion anyway, citing the "interest[s] of justice," and did not require Dice, or give him the opportunity to, "offer any good cause for the delay or to show that the lateness was due to excusable neglect." Id. Instead, "[i]t appear[ed] the district court decided to hear the motion because it felt the motion was meritorious." Id. The Court of Appeals concluded this "was error," reasoning:

Idaho Criminal Rule 12(d) clearly requires either good cause or excusable neglect to be shown by a party who has missed the prescribed deadlines. Allowing untimely motions to be heard because they appear meritorious eviscerates the purpose of the rule. The district court should have entertained an explanation by Dice's counsel for the delay and then should have determined whether good cause or excusable neglect was shown based on the reasons given. If no good cause or excusable neglect was established to the satisfaction of the district court, the motion should not have been heard.

Dice, 126 Idaho at 597, 887 P.2d at 1104.

As in Dice, Glenn never even offered an explanation for the delay that could have formed the basis of a finding of good cause or excusable neglect, and the court did not purport to find either, but considered the motion regardless for some unstated reason. (R., p.77.) The district court's decision to "relieve[ ] [Glenn] of his failure to comply with th[e] rule" under these circumstances was an abuse of discretion. Dice, supra; see also State v. Alanis, 109 Idaho 884, 888, 712 P.2d 585, 589 (1985) ("A court may not arbitrarily enlarge or shorten the filing requirements of the rule."). The denial of Glenn's motion to dismiss should be affirmed on this basis. See, e.g., State v. Avelar, 129 Idaho 700, 704, 931 P.2d 1218, 1222 (1997) (where the lower court reaches the correct result by a different theory, the appellate court will affirm the order on the correct theory).

## II.

Even If This Court Considers The Merits Of Glenn's Motion To Dismiss, Glenn Has Failed To Show That The District Court Erred In Denying The Motion Given The Controlling Holding In *Reed*, Which Glenn Has Not Shown To Be Manifestly Wrong, Unwise, Unjust, Or Contrary To Any Idaho Supreme Court Precedent

### A. Introduction

Glenn contends that although "the district court and counsel below were correct that *Reed* was not only on-point, but had similar facts to [his] case," reliance on that decision was nevertheless "error" because, he argues, "the Court of Appeals' decision in *Reed* is in direct conflict with several recent decisions from the Idaho Supreme Court, including, but not limited to, *Sharp*, *Parkinson*, *Robinson*, and *Manners*." (Appellant's Brief, p.6.) Glenn also contends "the Court of Appeals' effort at statutory interpretation in *Reed* was unnecessary, for the reasons set forth by the Idaho Supreme Court in *Verska*." (Id.) Glenn's

assertion that the district court erred by relying on binding precedent is without merit. As to his request that this Court overrule Reed, he has failed to offer any reasoned basis for doing so.

B. Standard Of Review

Idaho jurisprudence requires respect for its own precedent. The rule of stare decisis dictates that controlling precedent be followed “unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice.” State v. Dana, 137 Idaho 6, 9, 43 P.3d 765, 768 (2002); State v. Humphreys, 134 Idaho 657, 660, 8 P.3d 652, 655 (2000) (quoting Houghland Farms, Inc. v. Johnson, 119 Idaho 72, 77, 803 P.2d 978, 983 (1990)); see also State v. Guzman, 122 Idaho 981, 1001, 842 P.2d 660, 680 (1992) (“[P]rior decisions of this Court should govern unless they are manifestly wrong or have proven over time to be unjust or unwise.”); State v. Odiaga, 125 Idaho 384, 388, 871 P.2d 801, 805 (1994) (“Having previously decided this question, and being presented with no new basis upon which to consider the issue, [the Court is] guided by the principle of stare decisis to adhere to the law as expressed in [its] earlier opinions.”); State v. Card, 121 Idaho 425, 440-52, 825 P.2d 1081, 1096-1108 (1991) (McDevitt, J., specially concurring).

The interpretation and construction of a statute present questions of law over which the appellate court exercises free review. State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004); State v. Dorn, 140 Idaho 404, 405, 94 P.3d 709, 710 (Ct. App. 2004).

C. Glenn Has Failed To Show Error In The Denial Of His Motion To Dismiss

The state charged Glenn with felony driving under the influence pursuant to I.C. Idaho Code §§ 18-8004 and 18-8005(9). Section 18-8005(9) reads, in relevant part:

**[A]ny person who has pled guilty or has been found guilty of a felony violation of the provisions of section 18-8004, Idaho Code, a felony violation of the provisions of section 18-8004C, Idaho Code, a violation of the provisions of 18-8006, Idaho Code, a violation of the provisions of section 18-4006 3.(b), Idaho Code, notwithstanding the form of the judgment(s) or withheld judgment(s) or any substantially conforming foreign criminal felony violation, notwithstanding the form of the judgment(s) or withheld judgment(s), and within fifteen (15) years pleads guilty or is found guilty of a further violation of the provisions of section 18-8004, Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to subsection (6) of this section.**

(Emphasis added.)

Glenn moved for dismissal on the grounds that his prior felony DUI could not be used to enhance his current DUI because the prior felony was ultimately dismissed pursuant to I.C. § 19-2604. (R., pp.43, 49-61.) Glenn, however, acknowledges, as he must, that the Court of Appeals' recent opinion in Reed, *supra*, is dispositive of his argument. (Appellant's Brief, p.6.) In Reed, the Court of Appeals addressed an identical argument in relation to the same type of felony enhancement found in I.C. § 18-8005(6). 149 Idaho at 902, 243 P.3d at 1090. The Court framed the issue as follows: "whether a guilty plea that has been dismissed under I.C. § 19-2604(1) can be used for enhancement purposes under I.C. § 18-8005(6)." Id. The Court held that it could. Id. at 904, 243 P.3d at 1092. Thus, Glenn's claim that the district court erred in denying his motion to dismiss

as required by Reed is without merit. State v. Guzman, 122 Idaho 981, 986, 842 P.2d 660, 665 (Idaho 1992) (recognizing decisions issued by the Court of Appeals are “precedential law of this state, and all tribunals inferior to the Court of Appeals are obligated to abide by decisions issued by the Court of Appeals”).

This Court should also reject Glenn’s request to overrule Reed as he has failed to demonstrate Reed is manifestly wrong, unjust or unwise, nor has he established overruling Reed is necessary to vindicate plain, obvious principles of law and remedy continued injustice. Glenn contends otherwise, arguing Reed is in “direct conflict” with the Idaho Supreme Court’s opinions in United States v. Sharp, 145 Idaho 403, 179 P.3d 1059 (2008), State v. Parkinson, 144 Idaho 825, 172 P.3d 1100 (2007), State v. Robinson, 143 Idaho 306, 142 P.3d 729 (2006), and Manners v. State, Bd. of Veterinary Medicine, 107 Idaho 950, 694 P.2d 1298 (1985). (Appellant’s Brief, p.6.) Glenn further contends “the Court of Appeals’ effort at statutory interpretation in *Reed* was unnecessary, for the reasons set forth by the Idaho Supreme Court in *Verska*.” (Appellant’s Brief, p.6.) According to Glenn these “significant shortcomings” justify overruling Reed. (Appellant’s Brief, p.6.) A review of the cases upon which Glenn relies and consideration of accepted principles of statutory construction shows Reed was correctly decided and should not be overruled.

Glenn claims Reed is inconsistent with the “fundamental rule” he contends was “established” in Manners that a “conviction which is vacated [pursuant to I.C. § 19-2604] becomes non-existent in the history of the case and is to be treated as if it had never existed at all.” (Appellant’s Brief, p.8.) While the Court in

Manners undoubtedly stated that Manners' "conviction [ ] was erased when the judge . . . dismissed the charge against him pursuant to I.C. § 19-2604," 107 Idaho at 952, 694 P.2d at 1300, Glenn's claim that Manners established a "fundamental rule" that relief under I.C. § 19-2604 "erase[s]" a conviction for all purposes is contradicted by opinions issued post-Manners. The Supreme Court's opinion in Robinson, 143 Idaho 306, 142 P.3d 729, is illustrative.

In Robinson, the defendant pled guilty to an offense that subjected him to the sex offender registration act. 143 Idaho at 307, 142 P.3d at 730. Robinson was placed on probation and, upon completion of his probation, he "filed an application to have his guilty plea set aside and his case dismissed pursuant to I.C. § 19-2604(1), which was granted." Id. Robinson subsequently "filed a motion to be released from the sex offender registry and to have his name expunged from the central registry," which the district court denied. Id. On appeal, the Court addressed "whether the leniency afforded [Robinson] under I.C. § 19-2604(1) [took] him out of the purview of the registration act or whether" he instead had to meet the "requirements for release and expungement set out by our legislature in I.C. § 18-8310." Id.

In claiming he could not be required to register after being given relief under I.C. § 19-2604(1), Robinson relied on Manners for the proposition that he could "no longer be considered a person who pleaded guilty to an enumerated offense." Robinson, 143 Idaho at 309, 142 P.3d at 732. The Court rejected Robinson's argument, concluding "*Manners* does not dictate the result Robinson suggests." Id. The Court held:



*Manners* stands only for the proposition that I.C. § 19-2604(1) provides prospective relief, not retrospective relief. Idaho Code § 19-2604(1) can restore to a defendant his civil rights, but it cannot act, in this instance, to remove the statutory consequences of committing a sexual offense. Such removal would require a retrospective application of I.C. § 19-2604(1), in contradiction of *Manners*. Once Robinson came within the purview of the registration act by virtue of pleading guilty to I.C. 18-6008, the leniency shown him under I.C. 19-2604(1) could not change that status. The record-cleansing effects of I.C. 19-2604(1) works only to remove from consideration a felony conviction once leniency has been granted; it cannot reach back in time to remove Robinson from the application of the registration act.

Robinson, 143 Idaho at 309, 142 P.3d at 732. The Court also noted that, in Manners, it “accepted the proposition that the effects of I.C. § 19-2604 could be overridden by another statute.” Id. at 310, 142 P.3d at 733. The Court further explained:

[S]ince I.C. § 19-2604(1) is a legislative creation the leniency it affords offenders may be limited by other legislative acts. It is presumed that the legislature knew that guilty pleas could be withdrawn and charges dismissed under I.C. § 19-2604(1). Yet, the legislature did not specifically create an exception to the registration requirement for those who obtain such leniency when it easily could have written such an exception into the registration act. Instead, the legislature specifically made the registration act applicable to anyone who has a conviction for an enumerated offense and defined conviction as including anyone who has been adjudicated guilty of an enumerated sex offense notwithstanding the form of the judgment or withheld judgment. By adopting this definition of conviction and mandating that anyone convicted of an enumerated offense meet the requirements of I.C. § 18-8310 in order to be released from the registration requirements, the legislature made it clear that I.C. § 18-8310 is the only mechanism by which a sex offender can receive relief from the requirements of the registration act.

Robinson, 143 Idaho at 310, 142 P.3d at 733 (citations omitted).

Similarly, the Supreme Court in Parkinson rejected the notion that relief pursuant to I.C. § 19-2604(1) erases a conviction for all purposes. 144 Idaho at

828, 172 P.3d at 1103. The Court expressly stated “[a] conviction is **not** entirely erased” whenever relief is granted under I.C. § 19-2604(1). Id. (emphasis added). Thus, for example, although “the statute dictates that a dismissed conviction cannot be used to deny the defendant’s civil rights,” it “does not provide authority to take further actions, such as eliminating each and every reference to the case in an official record.” Id.

Contrary to Glenn’s claim, the Court of Appeals’ opinion in Reed is entirely consistent with Robinson and Parkinson. Indeed, the Court of Appeals cited both cases in reaching its conclusion in Reed. 149 Idaho at 903, 243 P.3d at 1091. Reed applies what was recognized in Robinson and Parkinson – the effect of relief awarded pursuant to I.C. § 19-2604(1) is not without limits and is subject to other legislative enactments. The other legislative enactment limiting its effect in Glenn’s case is, similar to Reed, the enhancement provisions of I.C. § 18-8005(9). Like I.C. § 18-8304(3), which compels a sex offender to register if he has “pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment,” I.C. § 18-8005(9) subjects defendants to a felony enhancement when the defendant “has pled guilty or has been found guilty of a felony [DUI] . . . , notwithstanding the form of the judgment(s) or withheld judgment(s) . . . .” In other words, the only predicate required for the enhancement is, under the plain language of I.C. § 18-8005(9), a prior guilty plea or finding of guilt. Compare Robinson, supra.

The Supreme Court’s opinion in Sharp does not change this conclusion. Indeed, Sharp does not even inform the analysis. In Sharp, the Court considered

the following question certified to it by the United States District Court for the District of Utah, Northern Division: “Does an outstanding withheld judgment based on a guilty plea qualify as a conviction under Idaho law?” 145 Idaho at 403, 179 P.3d at 1059. The Court held that it did, concluding that a conviction “means the establishing of guilt either by a plea of guilty or by a finding of guilt following a trial.” Sharp, 145 Idaho at 404, 179 P.3d at 1060. Nowhere in Sharp did the Court address the effect of relief under I.C. § 19-2604(1). Indeed, Sharp never even sought relief under that statute. Id. at 404, 179 P.3d at 1060. As such, Sharp has no bearing on the Court’s analysis in this case.

Glenn also contends that Reed should be overruled because, he claims, the Court of Appeals in deciding Reed engaged in “unnecessary” “statutory interpretation.” (Appellant’s Brief, p.6.) Although his argument in support of this claim is somewhat disjointed, it appears the basis for Glenn’s contention in this regard is that the Court of Appeals somehow applied incorrect principles of statutory interpretation in deciding Reed. (See generally Appellant’s Brief, pp.21-28.) Glenn specifically notes

the *Reed* Court stated that its approach to the statute was ‘to ascertain the legislative intent and give effect to that intent. To ascertain the intent of the legislature, not only must the literal words of the statute be examined, but also the context of those words, the public policy behind the statute and its legislative history. . . . Constructions of a statute that would lead to an absurd result are disfavored.

(Appellant’s Brief (quoting Reed at 904, 243 P.3d at 1092).) Glenn complains, this “approach has been soundly rejected by the Idaho Supreme Court” in

Verska<sup>3</sup>. (Appellant's Brief, pp.27-28.) Glenn overstates the principle rejected in Verska and misrepresents what the Court of Appeals did in Reed.

In Verska, the Supreme Court disavowed the judiciary's authority to interpret an unambiguous statute other than as written on the grounds that giving effect to the plain language of the statute would be palpably absurd. 151 Idaho at 895, 265 P.3d at 508. The Court reasoned that "[d]oing so would simply constitute revising the statute," which it did not have the authority to do. Id.

Just because the Court of Appeals' opinion in Reed recited the legal standard later disavowed in Verska does not mean the Court applied it. Indeed, as recognized by the Supreme Court in Verska itself, that language "or similar language" has been cited in cases "numerous times, usually without even addressing whether [the Court] considered the unambiguous statute absurd as written." Verska, 151 Idaho at 895, 265 P.3d at 508. Nothing in Reed supports the assertion that the Court of Appeals ignored the plain language of I.C. § 18-8005(9) or I.C § 19-2604(1) in order to avoid an "absurd result," which is what Verska rejects.

Moreover, in his effort to convince this Court that the Court of Appeals in Reed applied unsound principles of statutory interpretation, Glenn only quotes half of the boilerplate language from Reed. The first half of the standards recited in Reed encompass what Glenn notes is the proper standard from Verska (Appellant's Brief, pp.27-28):

---

<sup>3</sup> Verska v. Saint Alphonsus Regional Medical Center, 151 Idaho 889, 265 P.3d 502 (2011).

Where the language of a statute is plain and unambiguous, th[e] Court must give effect to the statute as written, without engaging in statutory construction. The language of the statute is to be given its plain, obvious, and rational meaning. If the language is clear and unambiguous, there is no occasion for the court to resort to legislative history or rules of statutory interpretation.

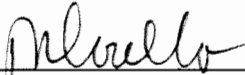
Reed, 149 Idaho at 904, 243 P.3d at 1092. Glenn, of course, also fails to include the modifying language preceding the standards he does quote. the full statement by the Court of Appeals is: **"When this Court must engage in statutory construction**, it has the duty to ascertain the legislative intent and give effect to that intent." Reed, 149 Idaho at 904, 243 P.3d at 1092 (emphasis added to reflect language omitted by Glenn).

Regardless of what can be argued about the language employed by the Court of Appeals in Reed, in the end, the Court of Appeals' conclusion was correct and consistent with Supreme Court precedent. In short, relief awarded in I.C. § 19-2604(1) does not "erase" a conviction for all purposes; because the relief afforded therein is created by the legislature, it can be limited by the legislature, which is precisely what the legislature has done in providing for the felony DUI enhancement in I.C. § 18-8005(9). Glenn's claims that Reed was wrongly decided and that district court erred in apply it fail.

CONCLUSION

The state respectfully requests this Court affirm the judgment entered upon Glenn's conditional guilty plea to felony driving under the influence.

DATED this 19<sup>th</sup> day of December, 2012.

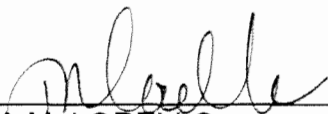
  
\_\_\_\_\_  
JESSICA M. LORELLO  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19<sup>th</sup> day of December, 2012, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

BRIAN R. DICKSON  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

  
\_\_\_\_\_  
JESSICA M. LORELLO  
Deputy Attorney General

JML/mg